

Add Section 6458 to the Sales and Use Tax Law to provide a 1 percent discount for the timely and accurate filing of sales and use tax returns by new permittees.

Source: Honorable Claude Parrish

Existing law imposes a sales tax on retailers for the privilege of selling tangible personal property at retail. In general, every person, firm, partnership, corporation, etc., engaging in the business of selling tangible personal property that is subject to the tax when sold at retail is required to apply to the Board of Equalization (Board) for a seller's permit.

Under the law, holders of seller's permits are required to file returns with the Board reporting their gross receipts and the amount of tax due. Depending on the amount of tax that is estimated to be due, return periods will generally consist of either calendar quarters, calendar months, calendar years, or fiscal years. Current law provides that the taxes and return are due to the Board on or before the last day of the month following each reporting period.

Current law provides that any person who fails to pay any tax to the state within the required time period shall pay a penalty of 10 percent of the tax due, in addition to the amount of the tax due, plus interest. Additionally, any person who fails to file a return within the required time period shall pay a penalty of 10 percent of the amount of taxes due. These penalties are limited to a maximum of 10 percent, so if a person fails to remit the taxes due and also fails to file the required return, the taxpayer is assessed only one 10 percent penalty.

The imposition of penalties and interest for late payment and late filing are imposed for two reasons. The first reason is to impose a financial penalty on those who do not comply with the law. The second reason is to financially compensate the state for the use of revenue that is due, but has not yet been received.

In addition to the penalty and interest approach used in California, other states also offer discounts or credits to encourage taxpayers to file timely. Currently, of the 46 states and District of Columbia that impose a sales or use tax, 28 states provide their taxpayers with some sort of credit or discount, provided the return is filed timely and accompanied by the taxes due. The amount of the discount varies between 0.50% and 5.0%. Additionally, many states also provide for a maximum credit or discount that can be claimed, such as \$50 per month or \$1,000 per year.

This proposal would allow new taxpayers filing on a yearly basis to claim a discount of one percent of the state tax liability (5.5 percent beginning July 1, 2004) after twelve months of operations, provided all returns and remittances are filed timely with the Board. The maximum discount a taxpayer may claim in a 12 month period is \$1,000. The proposed statute contains an inoperative date at

the end of the calendar year so that any new taxpayer who starts business any time during the calendar year would be able to qualify for the discount after 12 months of operations. The proposed statute also contains a repeal date one year after the inoperative date which would allow the Board to process the discounts and also the allow the Legislature to extend the proposed discount program with subsequent legislation.

This proposal would provide new taxpayers with a positive incentive to comply with the law. It would provide a credit or discount for timely filers. Offering a credit or discount would encourage new taxpayers to remit their taxes and file their returns on a timely basis.

There are many benefits to offering a discount or credit for taxpayers who file timely and remit their taxes in full, such as:

- Improved cash flows for the state.
- Reduced accounts receivables which would allow compliance staff to spend more time working on more difficult collection cases.
- Increased compliance by taxpayers.

Section 6458 is added to the Revenue and Taxation Code to read:

6458. (a) The board shall grant to a qualified person a sales and use tax offset, as defined in subdivision (b) and in the manner provided by subdivision (c), against that person's tax liability under Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 during the first 12 months of that person's trade or business operations.

(b) For purposes of this section:

(1) "Qualified person" means a person that meets all of the following conditions:

(A) The person conducts a new trade or business in this state that commences operations at any time during the operation of this section. In determining whether a trade or business activity qualifies as a new trade or business activity, the following rules apply:

(i) In any case in which a person purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by that person (or any related person) shall not be treated as a new trade or business activity.

(ii) In any case in which a person (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months ("prior trade or business activity"), and thereafter commences an

additional trade or business activity in this state, the additional trade or business activity shall not be treated as a new trade or business activity.

(iii) In any case in which a person, including all related persons, is engaged in trade or business activities wholly outside of this state and that person first commences doing business in this state (within the meaning of Section 23101) after December 31, 2004 (other than by purchase or other acquisition described in clause (i)), the trade or business activity shall be treated as a new trade or business activity.

(iv) In any case in which the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new trade or business activity shall be based upon all other relevant provisions of this section.

(v) "Acquire" includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(vi) "Related person" means any person that is related to that person under either Section 267 or 318 of the Internal Revenue Code.

(B) The person timely files, pursuant to Sections 6451, 6452, 6453, 6454, and 6455, all necessary returns with the proper remittance.

(C) The board, at the time a permit is issued pursuant to Section 6067, requires that the person file returns and make payments on a fiscal year or calendar year basis pursuant to Section 6455. (2) "Sales and use tax offset" means an amount, not to exceed one thousand dollars (\$1,000), that is otherwise equal to 1 percent of the qualified person's total tax liability computed pursuant to Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 during the first 12 months of the qualified person's trade or business operations.

(c) Except as provided in paragraph (2), the sales and use tax offset provided in paragraph (2) of subdivision (b) may only be claimed by a taxpayer on the first return required to be filed after the completion of the first 12 months of new trade or business operations.

(1) The offset amount claimed on the return may not exceed the total tax liability computed pursuant to Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 on the return in which the offset amount is claimed.

(2) If the offset amount allowed pursuant to paragraph (2) of subdivision (b) exceeds the amount allowed pursuant to paragraph (1), the taxpayer may claim the excess on the subsequent return to the extent that the amount claimed does not exceed the total tax liability computed pursuant to Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 on the subsequent return. The taxpayer may continue to claim any excess offset on subsequent returns until the total amount allowed pursuant to paragraph (2) of subdivision (b) has been claimed by the taxpayer.

(d) This section shall become inoperative on December 31, 2005, and as of January 1, 2007, is repealed.